

SERVED: December 15, 2005

NTSB Order No. EA-5196

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 12th day of December, 2005

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| _____ |) | |
| Petition of |) | |
| |) | |
| DAVID M. IRWIN |) | |
| |) | |
| for review of the denial by |) | Docket SM-4647 |
| the Administrator of the |) | |
| Federal Aviation Administration |) | |
| of the issuance of an airman |) | |
| medical certificate. |) | |
| _____ |) | |

OPINION AND ORDER

Petitioner, proceeding *pro se*, has appealed from the written order Administrative Law Judge William E. Fowler, Jr., issued in this proceeding on May 18, 2005.¹ By that decision, the law judge granted a motion by the Administrator for summary judgment, concluding that no issues of fact existed for

¹ A copy of the law judge's order is attached.

resolution at a hearing. We affirm the law judge's order.²

The federal air surgeon's denial of petitioner's application for a medical certificate was predicated on his history of psychosis, a circumstance which renders applicants ineligible for airman medical certification under 14 C.F.R. §§ 67.107(a)(2), 67.207(a)(2), and 67.307(a)(2).³ The law judge's

² We note that petitioner filed an earlier petition with the Board on October 18, 2004, seeking review of the Administrator's denials of his application for medical certification in July and August, 2004. The law judge determined that the Administrator's decisions were not administratively final decisions, and issued an order refusing to accept the petition due to lack of jurisdiction under 49 U.S.C. § 44703(d). Petitioner appealed the law judge's order to the full Board, and, on March 23, 2005, we dismissed petitioner's prior appeal (NTSB Order No. EA-5148), holding that the instant proceeding superceded petitioner's previous appeal.

In the present appeal, petitioner argues that the law judge failed to allow these proceedings to progress beyond the "pleading stage," and that the Board's earlier decision, dismissing petitioner's previous appeal as not ripe, was inappropriate. However, petitioner did not file a timely petition for rehearing, reargument, reconsideration, or modification of the order pursuant to 49 C.F.R. § 821.50; therefore, we need not consider this argument.

³ Under 14 C.F.R. §§ 67.107, 67.207, and 67.307, an individual who has an established medical history or clinical diagnosis of a psychosis does not meet the mental standard for any of the three classes of medical certification. The regulations define "psychosis" as referring to a mental disorder in which:

- (i) The individual has manifested delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition; or
- (ii) The individual may reasonably be expected to manifest delusions, hallucinations, grossly bizarre or disorganized behavior,

order reflects careful consideration of the airman medical records, attached to the Administrator's motion for summary judgment, which unequivocally establish petitioner's history of paranoid schizophrenia.

Petitioner's airman medical file, which dates back to 1977, includes evidence of voluntary and involuntary admissions to a variety of psychiatric facilities, and repeated diagnoses of "schizophrenia, paranoid type." Exhibit A to Administrator's motion for summary judgment at 17-19, 22-23, 74. The evidence also shows that petitioner had been treated on several occasions over the years with psychiatric medications, but that his compliance with such treatment was inconsistent. Id. at 21, 29, 31. In addition to medical records from psychiatric facilities, petitioner's medical file includes records pertaining to a Supplemental Security Income ("SSI") claim that he filed in 1997 with the Social Security Administration. Petitioner's SSI records show that petitioner reported a history of paranoia, auditory hallucinations, and deteriorating functioning that began in the 1970s. Id. at 29.

Petitioner's appeal includes several arguments. Petitioner

(continued)

or other commonly accepted symptoms of this condition.

primarily argues that his medical record does not adequately or reliably support the law judge's and the Administrator's conclusions that he has an established history or clinical diagnosis of psychosis. Similarly, petitioner argues that the Administrator's summary judgment motion inappropriately referred to "only one opinion" from the Administrator's chief psychiatrist, and that this opinion was erroneously based on DSM-IV,⁴ a publication that is not specifically referenced or defined in the regulations. Petitioner also argues that paranoid schizophrenia is not a "psychosis" as defined in 14 C.F.R. §§ 67.107, 67.207, or 67.307, and that the term "psychosis," as used in §§ 67.107, 67.207, and 67.307 is overbroad and therefore "arbitrary and capricious." Id. at 8.

Petitioner has not proffered any evidence to contradict the diagnosis of paranoid schizophrenia that consistently appears throughout his medical records. Rather, petitioner argues that he does not have an established history or "recent" clinical diagnosis sufficient to render him ineligible for a medical certificate. Id. at 7. In considering this argument, the law judge held, and we agree, that petitioner's medical records are, "replete with information that clearly establishes a medical

⁴ "DSM-IV" is a common acronym used to refer to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th Ed. 1994).

history or clinical diagnosis of paranoid schizophrenia, which is a psychosis." ALJ Decision at 6. According to DSM-IV, paranoid schizophrenia is a genetically influenced developmental brain disorder that is a psychosis. DSM-IV at 273, 283, 287 (discussing the broad definition of the term "psychotic," explaining how schizophrenia is classified as a "psychotic" disorder, and classifying schizophrenia into subtypes, including the paranoid type). Moreover, the applicable section of the FAA regulations defines the term "psychosis" to include disorders with symptoms such as those petitioner has experienced. See n.3, supra. As the Administrator points out, the regulations do not require a recent diagnosis. See Administrator's Brief at 16-17 (citing Schwartz v. Helms, 712 F.2d 633 (D.C. Cir. 1983), and stating that once a specifically disqualifying medical condition is established, an airman is automatically disqualified from receiving an unrestricted medical certification).

In addition, petitioner's argument that the Administrator's chief psychiatrist's conclusion that petitioner suffers from psychosis is "only one opinion" is not persuasive. Petitioner's medical records include diagnoses from a variety of psychiatrists, from different facilities and at different times, who all consistently diagnosed petitioner with "Schizophrenia,

paranoid type." In reaching his conclusion, the Administrator's chief psychiatrist reviewed petitioner's medical record. The chief psychiatrist's conclusion, therefore, arose from a conglomerate of medical evidence showing that petitioner has a psychosis that would preclude him from receiving a medical certificate. Petitioner has offered no contrary medical evidence.

Moreover, petitioner's argument that the federal air surgeon and the law judge erred when considering DSM-IV is not meritorious. We have previously used DSM-IV as a reference tool, and federal courts have considered the manual to be an authoritative source. Administrator v. Vannatta, NTSB Order No. EA-805 at 2 n.3 (1975) (citing DSM-II as an "authoritative work"); see also, e.g., Kansas v. Crane, 534 U.S. 407, 411, 413 (2002) (using DSM-IV in a criminal case); Petition of Witter, NTSB Order No. EA-4500 at 9 n.22 (1996) (referring to DSM-IV); Administrator v. Carroll, 6 NTSB 1170, 1173-74 (1989) (referring to DSM-III).

Finally, with regard to petitioner's argument that the term "psychosis" is overbroad, petitioner has an established history of the type of behavior described in the regulation, and has been repeatedly diagnosed with paranoid schizophrenia, which DSM-IV classifies as a "psychosis." Therefore, because

petitioner's condition clearly fits within the regulations' descriptions of psychosis, we need not consider petitioner's challenge.

In conclusion, petitioner has identified no reason for doubting the medical validity of the records in his medical file. As petitioner's pleadings do not establish any error in the law judge's decision to grant summary judgment and dismiss the case, his decision will be sustained.

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's appeal is denied;
2. The order of the law judge granting summary judgment in favor of the Administrator is affirmed; and
3. The denial of petitioner's application for a medical certificate under §§ 67.107(a)(2), 67.207(a)(2), and 67.307(a)(2) is affirmed.

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS and HERSMAN, Members of the Board, concurred in the above opinion and order.